

F I L E D  
Clerk  
District Court

JUN - 9 2006

For The Northern Mariana Islands  
By \_\_\_\_\_  
(Deputy Clerk)

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8      **Attorneys for Plaintiff Bernard Sikimour Phillip**

9      **IN THE UNITED STATES DISTRICT COURT**  
10     **FOR THE NORTHERN MARIANA ISLANDS**

11     **BERNARD SIKIMOUR PHILLIP, ) CIVIL CASE NO. 05-0039**  
12     **Plaintiff, )**  
13     **vs. ) DECLARATION OF JANE MACK IN**  
14     **UNITED STATES OF AMERICA, UNITED ) SUPPORT OF PETITION FOR**  
15     **STATES DEPARTMENT OF STATE, ) ATTORNEY FEES**  
16     **UNITED STATES IMMIGRATION AND )**  
17     **CUSTOMS ENFORCEMENT and )**  
18     **NANCY K. FINN, individually and in her )**  
19     **official capacity, )**  
20     **Defendants. )**

21     I, Jane Mack, declare under the penalty of perjury according to the laws of the United  
22     States and the CNMI that the following is true and based upon my personal knowledge, except  
23     where noted otherwise. I am competent to testify and, if called to testify, I would state as  
24     follows:

25     1) I am the Directing Attorney for the Marianas Office of Micronesian Legal  
26     Services Corp. ("MLSC"). In this capacity, I supervise others in my office and handle client  
27     cases. Since the Trusteeship Agreement was terminated, I have represented many people who  
28     seek issuance of their United States Passports. In my experience, some U.S. citizens need help  
because they do not receive their passports when they are born in Chuuk and the U.S. State  
Department, Honolulu Passport Office wrongly refuses to accept their documentation of name

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1 and date of birth. These citizens typically cannot afford to hire legal counsel to represent them  
2 in suits against the United States and its various agencies.

3       2)      Bernard Sikimour Phillip, the plaintiff in the above-captioned matter is a U.S.  
4 citizen who sought help from the Marianas Office of MLSC to get his passport. Our files show  
5 that the United States Department of State, Passport Agency, initially shelved his application  
6 because he did not provide an affidavit from his dead parents or others living at the time of his  
7 birth in Dublon, Chuuk in 1933. Instead, the U.S. Passport Agency advised Mr. Phillip, who was  
8 very ill and needed medical referral off Saipan, to apply for an FSM passport. The U.S. Passport  
9 Agency did not provide any information with that advice that, if Mr. Phillip took their advice,  
10 they would construe it as an admission against his interest in proving his entitlement to a U.S.  
11 passport.  
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13       3)      Having failed to mislead Mr. Phillip into giving up his entitlement to a U.S.  
14 passport as a U.S. citizen, the U.S. Passport Agency reverted to refusing to accept the certified  
15 copy of his Chuuk-government-issued birth record. Records in our files show that the U.S.  
16 Passport Agency demanded extra corroboration of the details of Mr. Phillip's birth. Based on the  
17 historical record, Dublon, the island of Mr. Phillip's birth, was the center of the Japanese  
18 government in Chuuk (then Truk) and was heavily bombed during World War II. Birth records  
19 and contemporaneous records from 1933 are virtually non-existent. Ms. Finn of the U.S.  
20 Passport Agency is aware of that records from Chuuk islanders born before World War II are  
21 not generally available from previous applications and litigation. (See paragraph 5).  
22

23       4)      By letter dated January 30, 2001, the Marianas Office pointed out to the U.S.  
24 Passport Agency that the procedures the agency was using for additional verification were based  
25 on regulations concerning birth certificates issued in the U.S. And in contrast, there are no  
26 federal regulations or statutes that require additional documentation for information about birth  
27 when there is a certified birth record from a foreign country. Additionally, all of Mr. Phillip's  
28 documents, from his Trust Territory passport, to the Certificate of Identity issued by the CNMI

1 in anticipation of the Trust termination, to his hospital and work records list identical  
2 information about Mr. Phillip's date and/or place of birth.

3 5) Previously, I represented two United States citizens of Chuukeese ancestry who  
4 became citizens under § 301 of the Covenant to Establish a Commonwealth of the Northern  
5 Mariana Islands in Political Union with the United States of America, P.L. 94-241 ("The  
6 Covenant"). The U.S. Passport Agency continually demanded more verification of their birth  
7 details and would not issue their U.S. passports. In order to help them, I filed a case in this  
8 Court, *Ilal & Okaruru v. U.S. Sec'y of State, et al.* C.A. # 96-08. During the course of the  
9 proceedings, I provided evidence to the government defendants that showed that no secondary  
10 birth records exist for birth certificates issued by the Chuuk Clerk of Courts for births before  
11 World War II (and in many cases, before the 1960's). This information was not specific to the  
12 two individuals in the *Ilal* case, but rather described the state of affairs of the record keeping  
13 with the Chuuk Clerk of Courts.

14 6) The case of Mr. Phillip is similar to that of Ilal and Okaruru, addressing both the  
15 demand for secondary birth information despite a certified birth record from Chuuk and the  
16 agency's finding fault with clear evidence of domicile. Our office represented Mr. Phillip in his  
17 later application for his United States passport. In his 2003 application, we provided the U.S.  
18 government with supporting documents. Despite the provision of these documents, Mr.  
19 Phillip's application was not finally disposed of until two years later.

20 7) After repeated attempts to clarify what documents the Department of State would  
21 accept to "prove" Mr. Phillip's status as a United States citizen, and repeated attempts by Nancy  
22 K. Finn to shelve his application by filing it "without further action," Mr. Phillip's passport  
23 application was rejected via a letter on July 29, 2005. The letter refers to applications for U.S.  
24 passport filed in 1999, 2000 and 2003 and says they were carefully reviewed. The U.S. Passport  
25 Office then stated that "They show that you were born in Chuuk, Federated States of Micronesia  
26 on May 31, 1933." The letter acknowledged receipt of proof that Mr. Phillip had registered to  
27 vote in CNMI municipal elections before January 1, 1975. But the agency found that his failure  
28 to provide "acceptable early secondary evidence of birth" was grounds for its action: "your

1 application has been denied." However, the evidence was clearly sufficient as to his date and  
2 place of birth.

3 8) The U.S. Passport Agency also demanded additional evidence as to Mr. Phillip's  
4 domicile. The relevant period under Covenant §301(b) was 1981 through 1986. Mr. Phillip's  
5 evidence included earnings on his social security record, his CNMI election commission  
6 certificate showing voting in municipal elections before 1975 and in every CNMI wide election  
7 from 1977 through the early 1989, records of health visits at the CHC, affidavits from long-time  
8 residents recalling his presence here, his own affidavit and his daughter's affidavit. The  
9 evidence amassed showed Mr. Phillip's presence in the CNMI from approximately 1973  
10 through the date of submission of the evidence. In fact, the evidence of Mr. Phillip's domicile  
11 was overwhelming.

12 9) The U.S. Passport Office refused to employ the legal principle that domicile  
13 continues until changed, and instead implied that there was a weakness in the evidence for  
14 March 1985 through 1986. In *Ilal & Okaruru vs. U.S. Sec'y of State, et al.*, the defendants, in  
15 their answer, said they were waiting for additional proof of "residency" before issuing a passport  
16 to Okaruru. In settlement negotiations, the meaning of domicile, which is what the Covenant  
17 requires for citizenship, was discussed and the legal principle that domicile continues until  
18 changed was clearly recognized. By the time of the Phillips case, officials of the U.S. Passport  
19 Office knew or should have known that it is arbitrary and capricious to find fault with proof of  
20 domicile by nitpicking about a perceived weakness in proof of residency during some month in  
21 a long period of time where evidence from both before and after clearly shows continued  
22 presence (and domicile) in the CNMI.

23 10) The MLSC records show that Mr. Phillip had at least two worrisome times when  
24 he needed to travel for medical reasons, and needed a U.S. passport to facilitate that travel, but  
25 had to make special arrangements. The refusal of the U.S. government, through its agencies, to  
26 issue a passport to this U.S. citizen, had actual repercussions on him and infringed on his right to  
27 travel at times when he was most vulnerable. Our efforts to help Mr. Phillip culminated in  
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1 referring the case to private counsel, where attorney fees could be awarded, for the wrongful  
2 denial and continuing refusal of the passport agency to issue him a U.S. passport.  
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4 Signed this 9<sup>th</sup> Day of June, 2006 on Saipan, CNMI:

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7 By: /s/ \_\_\_\_\_  
8 JANE MACK.  
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